IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

WP(C).No. 11587 of 2007(D)

PETITIONER:

MADHUSOODHANAN NAIR, ABHAYAM HOUSE,
A.M.C.W.17/534,(NEW NUMBER 20/96),
MULLACKAL WARD, ALAPPUZHA.

BY ADV. SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN

RESPONDENTS:

1. THE ALAPPUZHA MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
ALAPPUZHA.

2. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO DEPARTMENT OF
LOCAL SELF GOVERNMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

R1 BY ADV. SRI.M.K.CHANDRAMOHAND DAS, SC.
R2 BY ADV. SRI.K.J.MOHAMMED ANZAR, SR. GOVT.PLEADER.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 11587 OF 2007

Dated this the 19th day of September, 2007

JUDGMENT

In this case, the grievance of the petitioner who is the owner of a building within the limits of the 1st respondent Municipality by virtue of Ext.P1 sale document is that the Municipality is not taking any action on his application for effecting changes in the ownership of the building in the assessment books.

2. A detailed counter affidavit has been filed by the Municipality wherein it is contended as follows:

> "3. It is submitted that the building No.AMC W 17/534 is a residential building originally belonged to one Eliamma Vincent, had availed a loan of Rs.4,000/- for the repair under NRY scheme from the Municipality. The loan was availed after executing an agreement in favour of the Municipality promising the repay of loan portion of Rs.3,000/- in installments. It is also agreed by the loanee that the property will not be alienated till the loan is cleared.
>
> 4. It is further submitted that on verification of the Record the original owner had defaulted the repayment and an amount of Rupees more than 20,000/- is due. The fact was intimated to the petitioner by means of demand notice in terms of a bill and the petitioner promised to clear the arrears. But so far that is not paid. As per the conditions contained in the original agreement between the erstwhile owner the Municipality has a charge over

the property. Since the loan amount is due from the original owner the application for change of ownership of the premises is withheld.

5. It is respectfully submitted that at the time when the loan transactions took place, there was an unconditional undertaking by which a charge had been created over the property in question by the vendor of the petitioner, who took the loan. It is an admitted factual position that a sum of money is due to the Municipality. As per section 538(1) Kerala Municipalities Act, all costs damages, penalty, compensation, charges, fees, expenses, rents, contribution and other sum which under this Act or any other law or rules or by laws there under or under any contract made in accordance with the provisions of this Act, shall be recovered as tax due. Therefore amount payable under a contract have to be treated as tax due. The property in respect of which the claim for transfer of name in the register cannot be permitted since the Municipality retains a charges over the said property."

3. Heard Sri.S.Sanal Kumar, counsel for the petitioner and Sri.Leejoy Mathew, Standing Counsel for the Municipality. Mr.Sanal Kumar would refer to Rule 3 of the Kerala Municipalities(Transfer of Registry of ownership of Properties) Rules, 1966 and submit that it is obligatory that the Municipality follows the procedure contemplated under Rule 3 and passes orders transferring the registry. Counsel pointed out that the objective of the Municipality it is circumvent to that

Rule. Municipality has not disclosed as to when the loan was availed and as to how the figure of Rs.20,000/- which is now claimed by way of charge on the property has been arrived at. The counsel also referred to Section 539 of the Municipalities Act and submitted that obviously the claim is barred by limitation and that is why the Municipality is now adopting circuitous methods for recovering from the petitioner a time barred liability.

4. Resisting the above submissions, the learned counsel on behalf of the Municipality would refer to the various provisions which are referred to in the counter affidavit. He also invited my attention to the provisions of the Transfer of Property Act which say that like liability is a charge on the property. Counsel pointed out that, it is not contended through the pleadings that Municipality's claim is barred by limitation. Counsel submitted that as per the conditions contained in the loan agreement between the erstwhile owner and the Municipality, the Municipality has a charge over the property.

Having considered the rival submissions, I am of the view that the Municipality is not justified in insisting that the entire liability should be paid off by the petitioner as a condition precedent for effecting transfer in accordance with the provisions of Rule 3. The difficulties high lighted before me by the learned counsel for the petitioner on account of

transfer not being effected appear to be genuine. Under these circumstances, I dispose of the Writ Petition issuing the following directions:

The petitioner shall pay a sum of Rs.4,000/- towards the demand of the Municipality within three weeks from today. Upon receiving such payment, the Municipality shall take immediate action on the transfer application submitted by the petitioner under Rule 2(1) and finalise the same allowing mutation within another one month of its commencement. It is made clear that the liability currently due to the Municipality on account of the loan availed by Smt.Eliamma Vincent, the petitioner's predecessor will continue to be a charge on the property and it will be open to the Municipality to recover the liability in accordance with law. It is also made clear that it will be open to the petitioner to claim reimbursement of whatever amounts the petitioner has become compelled to pay for facilitating mutation of names in the Property Tax Register, from Smt.Eliamma Vincent by initiating appropriate proceedings against her in that regard.

PIUS C. KURIAKOSE, JUDGE

btt